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Case No. MD-10-1534A

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**
(Letter of Reprimand and Probation)

Holder of License No. 32018
For the Practice of Allopathic Medicine
In the State of Arizona.

The Arizona Medical Board ("Board") considered this matter at its public meeting on June 8, 2011. Sumit Dewanjee, M.D. ("Respondent") appeared before the Board for a formal interview pursuant to the authority vested in the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact, Conclusions of Law and Order after due consideration of the facts and law applicable to this matter.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.
2. Respondent is the holder of License No. 32018 for the practice of allopathic medicine in the State of Arizona.
3. The Board initiated case number MD-10-1534A on December 22, 2010, after receiving information that on December 20, 2010, Respondent agreed voluntarily not to exercise his privileges at Maricopa Integrated Health System as a result of possible impairment.
4. On December 20, 2010, Respondent arrived one and one half hours late for scheduled surgery at Maricopa County Hospital. He completed the first procedure he had scheduled for that morning, but was then informed that two senior nursing staff personnel had detected an odor suggestive of alcohol on his breath.

1 5. After hearing of the nurses' concerns, the Chairperson of the Anesthesia
2 Department asked Respondent if he was impaired. Respondent said he was not, but that
3 he would not exercise his privileges. He then left the hospital even though, according to
4 hospital records, he was instructed not to leave the premises.

5 6. Respondent acknowledged that he had had several drinks on December 19,
6 2010, but claimed he had stopped drinking by 10 PM that evening. He also stated that he
7 had ingested Listerine during the night because he was not feeling well. He later testified
8 that he ingested Listerine after completing the first procedure on the morning of December
9 20, 2010, as well.

10 7. During the Formal Interview, Respondent stated that he did not undertake
11 two other procedures that had been scheduled for the morning of December 20 based on
12 the nurses' comments regarding the smell of alcohol on his breath. In addition, he stated
13 that "I was sure I had alcohol in my system because of the Listerine."

14 8. Later in the Formal Interview, a Board member questioned why Respondent
15 would ingest Listerine after the initial procedure at the hospital when he knew that the
16 mouthwash contained alcohol. At that point, Respondent claimed that he "didn't know that
17 the alcohol in Listerine was just straight ethanol."

18 9. Respondent was called back to the hospital for alcohol testing. The urine
19 test, performed six hours after the schedule start time of Respondent's first surgery,
20 showed an alcohol level of 165 g/dl. According to the Board's addiction medicine
21 consultant, the urine test was equivalent to a .103 blood alcohol level.

22 10. On December 28, 2010, Respondent entered into a Practice Restriction that
23 prohibited Respondent from practicing medicine in the State of Arizona.

24 11. On December 29, 2010, Respondent was assessed by the Board's
25 Physician Health Program (PHP) Monitor who recommended that Respondent was safe to

1 practice medicine if enrolled in the Board's PHP program for a two year period. On
2 January 10, 2011, Respondent entered into a Consent Agreement to participate in PHP for
3 a period of two years, which vacated the Practice Restriction of December 28, 2010.

4 12. The standard of care in treating a patient includes the assumption that the
5 treating physician is not impaired in a way that would cause risk of harm to the patient.

6 13. Respondent deviated from the standard of care by being impaired on
7 December 20, 2010 when he presented for surgery as his urine test showed an alcohol
8 level of 165 mg/dl.

9 14. The schedule surgery was delayed one and one half hours. There was the
10 potential for misdiagnosis secondary to physician impairment. There was also the
11 potential for trauma to the knee during an assessment by an impaired physician with the
12 patient anesthetized.

13 15. During the Formal Interview, several members of the Board expressed
14 doubts about Respondent's credibility based upon inconsistencies in his testimony,
15 especially as it related to his use of Listerine. In addition, some Board members were
16 concerned that Respondent left the hospital premises for four hours before returning for a
17 urine drug screen. Finally, a numbers of members recognized that, even though there was
18 no actual patient harm in this case, the potential for harm was significant.

19 20 CONCLUSIONS OF LAW

21 1. The Board possesses jurisdiction over the subject matter hereof and over
22 Respondent.

23 2. The conduct and circumstances described above constitute unprofessional
24 conduct pursuant to A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice that is or might
25 be harmful or dangerous to the health of the patient or the public").

ORDER

IT IS HEREBY ORDERED THAT:

A. Respondent is issued a Letter of Reprimand.

B. Respondent is placed on probation for **two years** with the following terms and conditions:

1. Respondent shall promptly enroll in and participate in the Board's Physician Health Program (PHP) monitoring service, which is administered by a private contractor. ("Monitor").¹

2. Respondent shall not consume alcohol or any food or other substance containing poppy seeds or alcohol.

3. Respondent shall not take any illegal drugs or mood altering medications.

4. Respondent shall not take any controlled substances except as prescribed by a physician for a proper therapeutic purpose.

5. Respondent shall submit to random biological fluid testing for two years from the date of this Order (as specifically directed below).

6. Respondent shall provide the Monitor in writing with one telephone number that shall be used to contact Respondent on a 24 hour per day/seven day per week basis to submit to biological fluid collection. For the purposes of this section, telephonic notice shall be deemed given at the time a message to appear is left at the contact telephone number provided by Respondent. Respondent authorizes any person or organization conducting tests on the collected samples to provide testing results to the Monitor. Respondent shall comply with all requirements for biological fluid collection. Respondent shall pay for all costs for the biological fluid testing.

¹ Respondent's PHP participation is retroactive to January 10, 2011

1 7. Respondent shall provide the Monitor with written notice of any plans to
2 travel out of state.

3 8. Respondent shall successfully complete a monitor approved 36 hour
4 alcohol/drug awareness education class.

5 9. Payment for Services. Respondent shall for all costs, including Monitor
6 costs associated with participating in PHP at the time service is rendered, or within 30
7 days of each invoice sent to the Respondent. An initial deposit of two months monitoring
8 fees is due upon entering the program. Failure to pay either the initial monitoring deposit
9 or monthly fees 60 days after invoicing will be reported to the Board by the contractor and
10 may result in disciplinary action up to and including revocation.

11 **10. In the event of the use of drugs or alcohol by Respondent in violation of this**
12 **Order, Respondent shall promptly enter into an Interim Order for Treatment and Consent**
13 **to the Same at a Board approved facility. Following the successful conclusion of treatment,**
14 **Respondent shall execute a consent agreement for full participation in PHP. In no respect**
15 **shall the terms of this paragraph restrict the Board's authority to initiate and take**
16 **disciplinary action for violation of this Order.**

17 11. Respondent shall immediately provide a copy of this Order to all current and
18 future employers and all hospitals and free standing surgery centers where Respondent
19 has privileges. Within 30 days of the date of this Order, Respondent shall provide the
20 Monitor with a signed statement of compliance with this notification requirement.
21 Respondent is further required to notify, in writing, all employers, hospitals and free
22 standing surgery centers where Respondent currently has or in the future gains
23 employment or privileges, of a chemical dependency relapse.

24 12. In the event Respondent resides or practices as a physician in a state other
25 than Arizona, Respondent shall participate in the rehabilitation program sponsored by that

1 state's medical licensing authority or medical society. Respondent shall cause the
2 monitoring state's program to provide written quarterly reports to the Monitor regarding
3 Respondent's attendance, participation, and monitoring. The monitoring state's program
4 and Respondent shall immediately notify the Monitor if Respondent: a) is non-compliant
5 with any aspect of the monitoring requirements; b) relapses; c) tests positive for controlled
6 substances; d) has low specific gravity urine drug test(s), missed and/or late urine drug
7 tests, or otherwise rejected urine drug tests; and e) is required to undergo any additional
8 treatment.

9 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

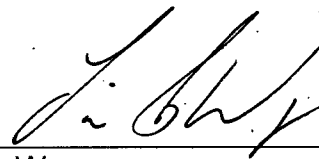
10 Respondent is hereby notified that he has the right to petition for a rehearing or
11 review. The petition for rehearing or review must be filed with the Board's Executive
12 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The
13 petition for rehearing or review must set forth legally sufficient reasons for granting a
14 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days
15 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not
16 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to
17 Respondent.

18 Respondent is further notified that the filing of a motion for rehearing or review is
19 required to preserve any rights of appeal to the Superior Court.

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22 DATED AND EFFECTIVE this 11TH day of AUGUST, 2011.
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ARIZONA MEDICAL BOARD

By 
Lisa S. Wynn
Executive Director

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EXECUTED COPY of the foregoing mailed
this 17th day of August, 2011 to:

Bryan Murphy, M.D.
Burch & Cracchiolo
702 E Osborn Rd Ste 200
Phoenix AZ 85014-5281
RESPONDENT'S ATTORNEY

ORIGINAL of the foregoing filed
this 17th day of August, 2011 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258


Arizona Medical Board Staff